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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/905,387

07/13/2001

Elvin Lukenbach

JBP-555

6099

27777

7590

03/10/2004

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EXAMINER

YU, GINA C

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 03/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

09/905,387

Applicant(s)

LUKENBACH ET AL.

Examiner

Gina C. Yu

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 34-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Receipt is acknowledged of response filed on December 9, 2003. Claims 1-38 are pending, of which claims 34-38 are withdrawn from consideration. Claim rejections made under 35 U.S.C. § 103(a) as indicated in the previous Office action dated September 9, 2003 are maintained for the reasons of record.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1-14, 17, 18, 21-29, 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chausse (US 5334325) in view of Wivell et al. (US 5599549) ("Wivell").

Rejection is maintained for the reasons of record.

2. Claims 15, 16, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chausse (US 5334325) and Wivell et al. (US 5599549) ("Wivell") as applied to claims 1-14, 17, 18, 21-29, and 31-33 as above, and further in view of Lorant (US 6333362 B1).

Rejection is maintained for the reasons of record.

3. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chausse, Wivell, and Lorant as applied to claims 1-18, and 21-33 as above, and further in view of Szymczak (US 5858343).

Rejection is maintained for the reasons of record..

Response to Arguments

Applicant's arguments filed December 9, 2003 have been fully considered but they are not persuasive.

Regarding the rejection made over Chausse ('325) in view of Wivell ('549), applicants argue that that the composition of the Wivell ('549) reference "itself is not taught or suggested to be in the form of a liquid crystal". Examiner respectfully disagrees that liquid crystal composition is outside the scope of the Wivell patent. The reference clearly indicates that that the composition can be in the form of liquid crystal in col. 4, lines 40 – 44. Furthermore, it is well settled in patent law that a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including nonpreferred embodiment. See *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 U.S.P.Q. 2d 1843 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989). In this case, even if the liquid crystal composition is not exemplified or referred as a specifically preferred formulation, the reference still provides the teaching to a skilled artisan that a foaming composition in the form of liquid crystal is well known in cosmetic art.

Applicants argue that the claimed composition contains oil "found within the liquid crystalline surfactant phase, not the water phase". Examiner views that the argument is not commensurate with the scope of the claims because the present claims do not limit as to where the oil phase is found. See claims. Furthermore, examiner views that the teaching in Wivell that the dispersed oil phase can exist in liquid crystal phase within the water phase merely means that the oil is present in a continuous water phase. The fact

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that liquid crystal is formed by surfactants does not negate the teaching that liquid crystal foaming composition is well known.

Regarding the rejection made over Chausse and Wivell, and further in view of Lorant ('362); and the rejection made over Chausse, Wivell, and Lorant, and further in view of Szymczak ('343), examiner maintains the rejection for the above reason.

Conclusion

No claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-0635.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone

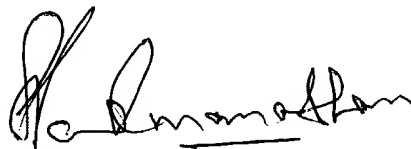
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number for the organization where this application or proceeding is assigned is (703)

872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina Yu
Patent Examiner



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER